

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of MARSHALL THOMAS  
RUSSELL and CHARLOTTE ROSE RUSSELL,  
Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

THOMAS LEE RUSSELL,

Respondent-Appellant,

and

VANESSA LENEA RUSSELL,

Respondent.

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In the Matter of MARSHALL THOMAS  
RUSSELL and CHARLOTTE ROSE RUSSELL,  
Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

VANESSA LENEA RUSSELL,

Respondent-Appellant,

and

THOMAS LEE RUSSELL,

UNPUBLISHED  
October 20, 2005

No. 260653  
Muskegon Circuit Court  
Family Division  
LC No. 02-031200-NA

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Respondent.

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Before: Kelly, P.J. and Meter and Davis, JJ.

PER CURIAM.

In these consolidated appeals, respondents Thomas Russell and Vanessa Russell each appeal as of right the trial court's order terminating their parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (c)(i), (c)(ii), (g), and (j). We affirm.

Respondents argue that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. When termination of parental rights is sought, the existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is given to the trial court's special opportunity to judge the credibility of witnesses. *In re Miller, supra* at 337.

Regarding § 19b(3)(b)(ii), the evidence established that the youngest child, Charlotte, was seriously injured by a pet raccoon when she was three months old. Regardless of whether the raccoon belonged to one or both respondents, both respondents had an opportunity to prevent the injury by providing proper supervision, properly securing the home, and by not allowing a wild animal to be kept as a pet. There was also clear and convincing evidence that respondent Vanessa Russell continued to fail to provide proper supervision of the children, and continued to fail to recognize potential dangers in everyday situations. The trial court did not clearly err in finding that this statutory ground for termination was proven by clear and convincing evidence with respect to Vanessa Russell. Although similar evidence establishing a likelihood of future injury was not presented with respect to respondent Thomas Russell, any error in relying on this statutory ground as applied to him was harmless, because other statutory grounds for termination were sufficiently proven.

Concerning § 19b(3)(c)(i), the conditions that led to the adjudication were Charlotte's injury, improper supervision, and inadequate housing. Although respondent Vanessa Russell rectified the housing situation, respondent Thomas Russell did not. Despite attending parenting classes, however, the evidence indicated that respondent Vanessa Russell continually failed to provide appropriate supervision, and was still not able to recognize potential dangers to the children. The trial court did not clearly err in finding that § 19b(3)(c)(i) was established by clear and convincing evidence with respect to both respondents.

Concerning § 19b(3)(c)(ii), the evidence indicated that respondent Thomas Russell was repeatedly incarcerated for petty offenses, was unable to maintain steady employment, failed to obtain a driver's license, did not engage with the children during visits, especially Charlotte, and did not visit consistently. Respondent Vanessa Russell committed various alcohol-related offenses, despite being underage, and refused to acknowledge a drinking problem. The trial

court did not clearly err in finding that § 19b(3)(c)(ii) was established by clear and convincing evidence with respect to both respondents.

Concerning § 19b(3)(g), respondents failed to provide proper care and custody for the children by keeping a wild animal as a pet, by not providing proper supervision, and by not having suitable housing. Respondent Vanessa Russell obtained employment and suitable housing. But while she also completed parenting classes, she continually failed to provide proper supervision, or recognize situations that presented a danger to the children. She also showed a lack of interest and involvement in Charlotte's development, and failed to regularly attend Charlotte's medical appointments. Additionally, she committed various alcohol-related offenses and refused to acknowledge a drinking problem, despite being underage. Respondent Thomas Russell failed to obtain steady employment or suitable housing, and was repeatedly incarcerated for petty offenses. Additionally, he too failed to benefit from parenting classes. Both respondents participated in counseling, but they declined to discuss issues involving their children with the therapist. Both respondents also violated their probation by committing new offenses. Respondents' failure to comply with portions of their parent-agency agreements, and failure to benefit from other services that were provided, was evidence of their failure and inability to provide proper care and custody. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); see also *In re Trejo*, 462 Mich 341, 360-362; 612 NW2d 407 (2000). The trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence with respect to both respondents.

Concerning § 19b(3)(j), in light of the evidence that respondent Vanessa Russell continually failed to provide proper supervision, and continually failed to recognize situations that presented a danger to the children, the trial court did not clearly err in relying on this statutory ground as further support for its decision to terminate her parental rights. And, while similar evidence establishing a likelihood of future harm was not presented with respect to respondent Thomas Russell, any error in relying on this statutory ground as applied to him was harmless, given that other statutory grounds for termination were sufficiently proven.

Once a statutory ground for termination is properly established, the trial court "shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). We review the trial court's best interest decision for clear error. *In re Trejo*, *supra* at 353-354.

The evidence indicated that although both respondents loved the children, they tended to favor Marshall, yet Charlotte had a greater need for emotional and physical support than Marshall. Marshall was more bonded to respondents than Charlotte, but the children were more bonded to each other than to respondents. The evidence did not clearly show that termination of respondents' parental rights was contrary to the children's best interests.

We reject respondents' arguments that petitioner failed to provide timely and appropriate services, or failed to comply with its statutory duties to make reasonable efforts toward reunification, thereby violating their due process rights.

Questions of law such as whether petitioner complied with statutory requirements are reviewed de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437

Mich 75, 80; 467 NW2d 21 (1991). Constitutional claims of due process violations are also reviewed de novo. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997).

The evidence indicated that petitioner was initially hindered in its ability to provide services because respondents repeatedly chose to further their own legal strategies rather than pursue reunification efforts to facilitate return of the children. Under MCR 3.965(E)(2), the trial court had only limited authority to order services before May 28, 2003, when the court formally acquired jurisdiction pursuant to respondents' pleas of admission. By then, the children had been in care for eight months and had not seen respondents for seven months.

Under the applicable statutes, the schedule for holding dispositional, review, and permanency planning hearings is determined by how long a children has been in foster care, not the resolution of a parent's other legal proceedings. See MCL 712A.19 and MCL 712A.19a. The record indicates that respondents were provided with appropriate services, but failed to participate in or complete some services, and failed to benefit from others. We agree with the trial court that petitioner was entitled to demand that respondents show not only that they were complying with prescribed requirements, but also that they were benefiting from the services provided. See *In re Trejo*, *supra* at 360-362 (a parent must demonstrate progress). The trial court properly found that petitioner complied with its statutory obligations to provide services and make reasonable efforts to achieve reunification. Respondents' rights to due process were not violated.

Lastly, respondent Vanessa Russell argues that the trial court erred by applying an incorrect standard of review, by not analyzing the evidence from a reasonable person's perspective, by making insufficient findings, and by improperly comparing her to the foster parents. We disagree.

Respondent provides no support for her argument that the trial court must view the evidence from the perspective of a reasonable person in her position. Additionally, we find no support for respondent's contention that the trial court improperly compared her to the foster parents. The trial court issued a lengthy decision in which it articulated the parties' respective positions, evaluated the evidence, and separately addressed each statutory subsection. The record demonstrates that the trial court was cognizant of the applicable standard of review and issued sufficient findings in satisfaction of MCR 3.977(H)(1). We discern no error in this regard.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Patrick M. Meter  
/s/ Alton T. Davis